

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA ADDING CHAPTER 12.09 TO TITLE 12 OF THE MUNICIPAL CODE AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

WHEREAS, the City of Hermosa Beach, California ("City") is a municipal corporation, duly organized under the constitution and laws of the State of California;

WHEREAS, pursuant to the California Constitution, Article, XI, section 7, the City may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general law;

WHEREAS, the California Constitution grants the City the right to adopt reasonable regulations regarding its rights-of-way, which would include the establishment of a street cut moratorium and the creation of clear enforcement mechanisms relating to encroachment permits;

WHEREAS, the public right-of-way is a unique public resource held in trust for the benefit of the public; this physically limited resource requires proper management to maximize its efficiency and minimize the costs to taxpayers, to protect against foreclosure of future economic expansion because of premature exhaustion of the public right-of-way, and to minimize the inconvenience to and negative effects on the public from use of the public right-of-way by contractors and utility companies;

WHEREAS, a pavement moratorium would protect the City's investment in its infrastructure, preserve the life of streets, and provide a safe driving surface and a pleasing appearance to roadway surfaces that have undergone utility work;

WHEREAS, the City desires to establish a pavement moratorium through the adoption of this ordinance and incorporated guidelines to further the purposes stated herein;

WHEREAS, pursuant to California Government Code section 53069.4, the City may, by ordinance, make the violation of any ordinance enacted by its City Council subject to a civil administrative fine or penalty; and

WHEREAS, given the foregoing, the City has determined that it is appropriate to amend section 1.10.040 to include that violations of this ordinance are prohibited and subject to administrative penalties.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH DOES ORDAIN AS FOLLOWS:

SECTION 1: The recitals above are each incorporated by reference and adopted as findings by the City Council.

SECTION 2: The City Council hereby finds that the ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines sections 15060(c)(2), 15061(b)(3), and 15378(b)(5). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable physical change in the environment; and the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA.

SECTION 3: Amendment. Section 1.10.040(A) of Title 1 of the Municipal Code is amended to add the following:

"28. Chapter 12.09, Pavement Moratorium"

SECTION 4: Chapter 12.09 is added to Title 12 of the Hermosa Beach Municipal Code to read in its entirety as follows:

"Chapter 12.09 Pavement Moratorium

12.09.010 Purpose.

The public right-of-way is a unique public resource held in trust for the benefit of the public; this physically limited resource requires proper management to maximize its efficiency and minimize the costs to taxpayers, to protect against foreclosure of future economic expansion because of premature exhaustion of the public right-of-way, and to minimize the inconvenience to and negative effects on the public from use of the public right-of-way by contractors and utility companies.

A pavement moratorium would protect the City's investment in its infrastructure, preserve the life of streets, and provide a safe driving surface and a pleasing appearance to roadway surfaces that have undergone utility work.

12.09.020 Definitions.

The following definitions are applicable within this chapter:

- A. "Completion date" means the date the Notice of Completion was signed by the Public Works Director or designee for the completion of roadway construction, resurfacing operations, or maintenance. For areas paved as public improvements for a private development, this date shall be the date the final inspection form was signed by the Public Works Inspector. For public improvements for which a final inspection form was not signed, this date shall be the actual date of completion of the work.
- B. "Excavate" or "excavation" means any cutting, digging, potholing or otherwise disturbing the paved surface within the public right-of-way. All such excavations shall require a right-of-way permit issued in accordance with Chapter 12.12.

- C. "Permit" means written authorization from the Public Works Director or designee to excavate, encroach upon, or obstruct the public right-of-way.
- D. "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, any district, any city, any county including this county, and all departments and bureaus thereof except the city of Hermosa Beach.
- E. "Public right-of-way" means the area in, upon, above, beneath, or across any public street, parking lot, or other City-owned parcel or easement, including but not limited to any highway, street, lane, court, alley, boulevard, sidewalk, median, parkway, parking lot, or easement reserved by or dedicated to the City for public use.
- F. "Roadway" means any public street, including but not limited to any highway, street, lane, court, alley, boulevard, median, parkway, parking lot, or easement reserved by or dedicated to the City for vehicular or pedestrian travel.

12.09.030 Adoption of Guidelines.

The City Manager or their designee has the authority to administer and enforce the provisions of this Chapter and may administratively establish rules and guidelines to implement and interpret this Chapter.

12.09.040 General Requirements.

- A. No entity or organization shall be exempt from the requirements of this Chapter including, but not limited to, utility companies, state agencies, federal agencies, school districts, and private developers.
- B. Except as set forth in the City of Hermosa Beach Department of Public Works Pavement Moratorium Guidelines, permission to excavate in roadways shall not be granted for three (3) years following roadway maintenance, including but not limited to chip seal, cape seal, slurry seal, micro paving, or other maintenance of an asphalt concrete roadway; for five (5) years after the completion date of roadway construction, including but not limited to reconstruction, grind and overlay, or other replacement of an asphalt concrete roadway; or for ten (10) years following roadway construction, including but not limited to reconstruction of a Portland cement concrete roadway.
- C. Details implementing this pavement moratorium may be set forth in the City of Hermosa Beach Department of Public Works Pavement Moratorium Guidelines, which may be updated from time to time in accordance with this Chapter. These

Guidelines will be made available to the public on the City's website and may be requested from the City Clerk's Office."

12.09.050 Violation.

Any person violating any provision of this Chapter or any Guidelines adopted in accordance with this Chapter shall be subject to the enforcement provisions of Chapter 1.04 and shall be subject to a civil administrative penalty pursuant to Chapter 1.10. Each person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of this Chapter or the Guidelines is committed, continued, or permitted.

SECTION 5: This ordinance shall become effective thirty (30) days following its adoption.

SECTION 6: The City Council hereby directs staff to prepare, execute and file with the Los Angeles County Clerk a Notice of Exemption within five working days of the approval and adoption of this ordinance.

SECTION 7: If any provision of this ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this ordinance are severable. The City Council declares that it would have adopted this ordinance irrespective of the invalidity of any portion thereof.

SECTION 8: The documents and materials that constitute the record of proceedings on which this ordinance and the above findings have been based are located in the City Clerk's Office, 1315 Valley Drive, Hermosa Beach, CA 90254. The City Clerk is the custodian of records.

PASSED, APPROVED, AND ADOPTED this 28th day of November, 2023.

JUSTIN MASSEY, MAYOR

ATTEST:

MYRA MARAVILLA, CITY CLERK

APPROVED AS TO FORM:

PATRICK DONEGAN, CITY ATTORNEY